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# W 21a

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49 <sup>th</sup> Day:	Opened and Continued
Staff:	Eric Oppenheimer
Staff Report:	April 26, 2000
Hearing Date:	May 10, 2000
Commission Action:	

STAFF REPORT  
DE NOVO HEARING ON APPEAL

LOCAL GOVERNMENT:	County of Mendocino
DECISION:	Approval with Conditions
APPEAL NO.:	<b>A-1-MEN-00-02</b>
APPLICANT:	<b>SALLY OTTOSON</b>
PROJECT LOCATION:	Just north of Kibesillah Creek, 9 miles north of Fort Bragg on the west side of Highway One at mile post marker 75.58, Mendocino County, APN 15-370-11.
PROJECT DESCRIPTION:	Expansion of an existing winery operation to include an expanded storage area, office, and wine tasting facility. The expansion would be accommodated within (1) a new 22-foot-tall, two-story barn with a 2,640-square-foot footprint, and (2) a 2,271-square-foot addition to an existing building.
APPELLANT:	<b>Mary Walsh and Mendocino &amp; Lake Group Sierra Club</b>
SUBSTANTIVE FILE DOCUMENTS:	Mendocino County CDU File No. 16-99; Mendocino County Local Coastal Program.

1. Procedure

On March 15, 2000, the Coastal Commission found that the appeal of Mendocino County's approval raised a substantial issue with respect to the grounds on which the appeal had been filed, pursuant to Section 13115 of the Title 14 of the California Code of Regulations. As a result, the County's approval is no longer effective, and the Commission must consider the project de novo. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is (1) within an area for which the Commission has certified a Local Coastal Program, and (2) is located between the sea and the first public road paralleling the sea, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's Local Coastal Program and with the public access and public recreation policies of the Coastal Act. Testimony may be taken from all interested persons at the de novo hearing.

2. Continued De Novo Hearing

The de novo hearing was opened at the Commission meeting of March 15, 2000. Staff had recommended denial of the project based on inconsistencies with the certified LCP, with particular concerns regarding the expansion of the non-conforming use and impacts to visual resources. The Commission continued the hearing and directed staff to further investigate the project's consistency with the LCP policies regarding expansion of non-conforming uses and to examine the historical intent of the County LCP policies regarding the expansion of non-conforming uses. Additionally, the Commission requested the applicant to evaluate revised development scenarios (e.g. a lower building height) that would be consistent with LCP visual protection policies.

SUMMARY OF STAFF RECOMMENDATION:

1. SUMMARY OF STAFF RECOMMENDATION DE NOVO: APPROVAL WITH CONDITIONS

The staff recommends that the Commission **APPROVE** the coastal development permit application for the proposed project on the basis that the project, as conditioned, is consistent with the County's certified LCP.

At the substantial issue portion of the appeal hearing, the commission found that the project, as approved by the County, raised a substantial issue with the County's certified LCP standards regarding visual resources, expansion of non-conforming uses, and public access. After additional research and further analysis of the LCP policies pertaining to the expansion of non-conforming uses, staff recommends that the Commission find the project, as conditioned, is consistent with the expansion of non-conforming use policies contained in the County's certified LCP. In addition, staff is recommending a number of special conditions, which, if attached to the coastal development permit for the proposed

project, will ensure the project's consistency with all other policies of the County's certified LCP.

Staff is recommending a condition that would require the applicant to prepare and submit final design and construction plans that implement the recommendations and design criteria identified in the applicant's geotechnical report. Another condition would require the applicant to submit revised design and construction plans that (1) limit building heights to a maximum of 18 feet above natural grade; and (2) limit on site signage to one 32-square-foot non-illuminated wooden sign, a maximum of 15 feet tall. These conditions also require the applicant to undertake the development in conformance with the final revised plans, which must be reviewed and approved by the Executive Director. Staff is also recommending a condition which would require the applicant to record a deed restriction stating that any future development of the property will require an amendment to the coastal development permit or a new coastal development permit. Additionally, the deed restriction would prohibit the approved development from being used as a commercial wine tasting facility.

Other recommended conditions include conditions which would require the applicant to submit revised erosion control plans, impose design restrictions on the proposed development, and obtain an encroachment permit from Caltrans.

Staff Recommends approval of the project only as conditioned herein.

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I. MOTION, STAFF RECOMMENDATION DE NOVO, AND RESOLUTION:

1. MOTION:

I move that the Commission approve Coastal Development Permit No. A-1-MEN-00-02 pursuant to the staff recommendation.

2. RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

3. RESOLUTION TO APPROVE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the certified County of Mendocino LCP and is located between the sea and the nearest public road to the sea and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the

environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions: See attached.

III. Special Conditions:

1. Conformance of the Design and Construction Plans to Geotechnical Report.

A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the recommendations contained in the geotechnical report dated April 22, 1999 prepared by BACE Geotechnical. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and has certified that each of those plans is consistent with all of the recommendations specified in the above-referenced geotechnical reports approved by the California Coastal Commission for the project site.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. No Future Bluff or Shoreline Protective Device

A(1) By acceptance of this permit, the applicant agrees, on behalf of herself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-1-MEN-00-02, including, but not limited to, the structures, foundations, decks, driveways, or the septic system and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of herself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235 or under Mendocino County LUP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1).

A(2) By acceptance of this permit, the applicant further agrees, on behalf of herself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the structures, foundations, and septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the

development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

- A(3) In the event the edge of the bluff recedes to within 10 feet of the existing winery building expansion or the new building authorized by the permit, but no government agency has ordered that the structures not be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicant, that addresses whether any portions of the structures are threatened by wave, erosion, storm conditions, or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the buildings without shore or bluff protection, including but not limited to removal or relocation of portions of the buildings. If the geotechnical report concludes that a building or any portion of the building is unsafe for occupancy, the permittee shall, in accordance with a coastal development permit remove the threatened portion of the structure.

- B. **PRIOR TO THE ISSUANCE OF COASTAL DEVELOPMENT PERMIT NO. A-1-MEN-00-002**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. Assumption of Risk, Waiver of Liability and Indemnity Agreement

- A. By acceptance of this permit, the applicant, on behalf of (1) herself; (2) her successors and assigns and (3) any other holder of the possessory interest in the development authorized by this permit, acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; and (v) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (i) through (iv).

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection A of this condition. The restriction shall include a legal description of the landowner's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
4. Future Development and Limitation on Use Deed Restriction.
- A. This permit is only for the development described in Coastal Development Permit No. A-1-MEN-00-002. Wine tasting facilities are not authorized by this coastal development permit. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including but not limited to, a change in the density or intensity of use land shall require an amendment to Permit No. A-1-MEN-00-002 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.
- B. This permit is only for the development described in coastal development permit No. A-MEN-00-02. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to (1) repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), and (2) expansion of the vineyard, shall require an amendment to Permit No. A-MEN-00-02 from the Commission or from the applicable certified local government.
- C. No portion of the winery facilities shall be used for commercial wine tasting or on-site retail sales purposes.
- D. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restrictions on development. The deed restriction shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

5. Revised Design and Construction Plans.

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final design and construction plans, including but not limited to site plans, floor plans, building elevations, roofing plans, final material specifications, sign plans, and lighting plans to the Executive Director for review and approval. The final plans shall show the following changes to the project:

1. ARCHITECTURAL REVISIONS

- (a) The new barn building constructed pursuant to Coastal Development Permit No. A-1-MEN-00-02 shall be reduced in height to a maximum of 18 feet tall above natural grade as measured pursuant to the guidance provided by Mendocino County in Exhibit 12 of the Commission staff report. To achieve this reduction in height the new barn building may be moved northward toward the existing structure, however the new barn building shall not be moved any closer to Highway One.

2. SIGN PLAN

- (a) Only one sign constructed of wood on larger than 32-square feet in area is permitted on site. The sign must be setback a minimum of 150 feet from the centerline of Highway One and be a maximum of 15 feet tall. The sign may not be illuminated from any source.

- B. The final plans shall, prior to submittal to the Executive Director, be reviewed and certified by a qualified professional to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Erosion and Run-Off Control Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a revised plan for erosion and run-off control.

1. REVISED EROSION CONTROL PLAN

- (a) The revised erosion control plan shall demonstrate that:

- (1) During and after construction, erosion on the site shall be controlled to avoid adverse impacts to Kibesillah Creek.
    - (2) The following temporary erosion control measures shall be used during construction: hay bales and other siltation barriers shall be placed between areas of soil disturbance and Kibesillah Creek. If precipitation occurs soil piles shall be covered or contained and stormwater run-on shall be directed away from disturbed areas.
    - (3) Following construction, erosion on the site shall be controlled and disturbed areas stabilized with seeding, mulching or other methods necessary to avoid sediment discharge and adverse impacts to Kibesillah Creek.
    - (4) Excavated material shall be stabilized or disposed of in a manner that will not have the potential for discharge to Kibesillah Creek or the Pacific Ocean, neither directly by dumping or indirectly by stormwater wash-off from the site.
  - (b) The revised plan shall include, at a minimum, the following components:
    - (1) A narrative report describing all temporary run-off and erosion control measures to be used during construction and all permanent erosion control measures to be installed for permanent erosion control.
    - (2) A site plan showing the location of all temporary erosion control measures.
    - (3) A schedule for installation and removal of the temporary erosion control measures.
    - (4) A site plan showing the location of all permanent erosion control measures.
    - (5) A schedule for installation and maintenance of the permanent erosion control measures.
    - (6) A soil management plan that identifies the location (on and off site) and method of disposal for all excavated material.
  - B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
6. Design Restrictions
- All exterior siding and visible exterior components of the structures authorized pursuant to Coastal Development Permit A-1-MEN-00-02 shall be of natural or natural-appearing materials of dark earthtone colors, only, and the roof of any



structure shall also be of dark earthtone color and shall be of natural-appearing material. In addition, all exterior materials, including the roofing materials and windows, shall be non-reflective to minimize glare. Additionally, all development authorized pursuant to Coastal Development Permit A-1-MEN-00-02 shall be designed and constructed to match the motif and color schemes of the existing on-site development (barn). Finally, all exterior lights, including lights attached to the outside of any structures, shall be low-wattage, non-reflective and have a directional cast downward.

7. California Department of Transportation Approval

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** applicant shall provide to the Executive Director a copy of an encroachment permit issued by the California Department of Transportation, or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the California Department of Transportation. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. PROJECT HISTORY.

On October 21, 1999, the Mendocino County Planning Commission voted 4-1 to deny Coastal Development Use Permit #16-99 (CDU #16-99) for the subject development. On October 28, 1999 the applicant appealed the decision of the Mendocino County Planning Commission and the appeal was considered by the County Board of Supervisors during a public hearing on December 13, 1999. The Board of Supervisors unanimously overturned the Planning Commission's previous decision to deny the coastal development permit and ultimately approved the development with conditions.

The County issued a Notice of Final Action, which was received by Commission staff on January 3, 2000 (Exhibit 7). The local decision was then appealed to the Commission, by Mary Walsh and the Mendocino & Lake Group Sierra Club, in a timely manner on January 12, 2000.

The hearing on the appeal was opened and continued on February 16, 2000. Staff prepared a recommendation that the Commission find that the project as approved by the County raised a substantial issue of conformance with the County's certified LCP. Staff also recommended denial of the project based on inconsistencies with a number of policies of the certified LCP, with particular concerns regarding expansion of non-conforming use and visual protection policies. The Commission found substantial issue

on March 15, 2000, continued the de novo hearing, and directed staff to further investigate the project's consistency with the County's LCP.

**B. PROJECT AND SITE DESCRIPTION.**

The approved development is situated on a 15-acre blufftop parcel located approximately 9 miles north of Fort Bragg, just north of Kibesillah Creek on the west side of Highway One. The subject property is comprised of two marine terraces. The upper terrace slopes gently to the southwest from an elevation of approximately 120 feet at Highway One to an elevation of 75 feet at the break in slope to the lower terrace. There is approximately 10 to 20 feet of vertical separation between the upper and lower terraces. The lower terrace ranges in height from 40 to 60 feet and is located on a headland that occupies the western one-third of the parcel. The western edge of the property consists of steep ocean bluffs with incised inlets and sea caves. The southern parcel boundary is formed by Kibesillah Creek and its associated riparian corridor. Highway One runs parallel to the eastern property boundary and Caltrans owns a 150-foot-wide right of way between Highway One and the subject property.

In 1988, the Commission approved the existing 30.5-foot-tall wine making building with attached living quarters, a well, a septic system, a driveway, a 5000-gallon water tank, and a test plot vineyard on the subject site. Approximately 2.5 acres of existing vineyards have been established on the upper terrace and the approved existing residence/winery facility and water tower has been constructed on the lower terrace. A gravel driveway has also been constructed for site access.

The proposed development consists of the expansion of the existing non-conforming winery operation to include a new wine tasting facility and expanded storage and office space. The approved site improvements include (1) a 22-foot-tall, two-story barn with a 2,640-square-foot footprint; (2) a 2,271-square-foot addition to an existing building; and (3) a forty-square-foot sign. The 2,271-square-foot building addition would extend from the seaward side of the existing building and the new barn would be located on the lower terrace in the vicinity of the existing building. The proposed wine tasting room would occupy a 3000-square-foot portion of the building addition. All of the proposed development would maintain a 65-foot setback from the bluff edge as recommended in the applicant's geotechnical report prepared for the project.

The subject parcel is zoned agricultural and the agricultural zoning designation within the coastal zone does not allow for wine tasting rooms. The surrounding area is largely undeveloped and the site is located within a designated highly scenic area. Aside from the vineyard, the property is primarily vegetated with grass. When traveling along Highway One, the subject property and surrounding area is viewed as a wide-open coastal terrace with an expansive blue water backdrop. The existing residence/winery building, which blocks a portion of the blue water view from public vantage points along Highway One, is the only building currently visible from Highway One along this scenic stretch of coastline. However, the existing building is located approximately 800 feet from Highway One and the lower portion of the building is shielded from view by the

vertical separation between the upper and lower terrace. As a result, the visual prominence of the building has been minimized.

C. ANALYSIS OF LCP CONSISTENCY

1. Non-Conforming Winery Use in Agricultural Area

Mendocino County LUP Policy 3.2-4 states that:

*Zoning regulations shall not discourage compatible activities that enhance the economic viability of an agricultural operation. These may include cottage industry, sale of farm products, timber harvesting, not subject to the Forest Practices Act and limited visitor accommodations at locations specified in the plan. Visitor accommodations shall be secondary to the agricultural activity. Proposed projects shall be subject to a conditional use permit. Granting of the permit shall require affirmation findings to be made on each of the following standards. The project shall:*

- *maximize protection of environmentally, sensitive habitats;*
- *minimize construction of new roads and other facilities;*
- *maintain views from beaches, public trails, roads and views from public viewing areas, or other recreational areas;*
- *ensure adequacy of water, sewer and other services;*
- *ensure preservation of the rural character of the site; and*
- *maximize preservation of prime agricultural soils;*
- *ensure existing compatibility by maintaining productivity of on site and adjacent agricultural lands.*

The AG Land Use classification as set forth on page 23 of the LUP states that principally permitted uses under this classification include the following:

*Agricultural uses; including one single family dwelling unit and associated utilities; the processing and sale of agricultural products and home occupations.*

Mendocino County Zoning Code Section 20.336.035 **Packing and Processing**, in relevant part states that:

*Packing or processing of agricultural crops, animals and their byproducts which entails more than picking, cutting, sorting and boxing or crating, but does not include rendering, tanning, or reduction of meat. The following are packing and processing use types:*

- (A) **Packing and Processing: Limited.** *Packing or processing of crops grown on the premises. Includes mineral water bottling plants.*

- (B) ***Packing and Processing: Winery.*** *Crushing of grapes and fermentation, storage, and bottling of wine from grapes grown on or off the premises. Said use type also includes tasting room in conjunction with a winery and breweries provided said tasting room occupies less than twenty-five (25) percent of the floor space of the winery/brewery and sales are limited to products produced on site.*

Mendocino County Zoning Code Section 20.356.010 **Principal Permitted Use for AG Districts**, states that:

*The following use types are permitted in the Agricultural District:*

- (A) ***Coastal Residential Use Types.***  
*Family Residential; Single-family;  
Vacation Home Rental.*
- (B) ***Coastal Agricultural Use Types.***  
*Horticulture;  
Light Agriculture;  
General Agriculture;  
Row and Field Crops;  
Tree Crops.*

Mendocino County Zoning Code Section 20.356.015 **Conditional Uses for AG Districts**, states that:

*The following are permitted uses upon the issuance of a coastal development use permit:*

- (D) ***Coastal Agricultural Use Types.***  
*Animal Waste Processing;  
Aquaculture;  
Packing and Processing: Limited.* (emphasis added)

Zoning Code Section 20.480.005 states that:

*To allow for the continued utilization of lawfully existing improvements and uses made nonconforming by the adoption of the Coastal Element of the Mendocino County General Plan and this Division, where the use is compatible with adjacent land uses and where it is not feasible to replace the activity with a conforming land use.*

- (A) *A nonconforming use is a use of a structure or land which was lawfully established and maintained prior to the adoption of this Division but which does not conform with the use regulations for the zone in which it is located.*

- (B) *A nonconforming structure is a structure which was lawfully erected prior to the effective date of the application of these regulations but which, under this Division, does not conform with the standards of yard spaces, height of structures, distance between structures, parking, etc., prescribed in the regulations for the zone in which the structure is located. (Ord. No. 3785 (part), adopted 1991)*

Mendocino County Zoning Code Section 20.480.010 states that:

- (A) *A legal nonconforming use or structure may be continued if it conforms to the following criteria:*
- (1) If the existing use is contained within a structure built or modified to accommodate the existing use, conformance is required with the applicable building code and/or zoning code in effect at the time of construction or modification.*
  - (2) The use must be compatible with adjacent land uses, such that its hours of operation, noise levels, aesthetic impacts, and traffic to the site do not now significantly adversely impact adjacent land uses.*
- (B) *Routing maintenance and repairs may be performed on a nonconforming structure or site. (Ord. No. 3785 (part), adopted 1991)*

Mendocino County Zoning Code Section 20.480.025 **Expansion or Reduction of Nonconforming Uses**, states that:

- (A) *Existing legal nonconforming uses conforming with Section 20.480.010 **may be expanded or reduced to a use of lesser intensity** through the issuance of a Coastal Development Use Permit provided the following findings are made: (emphasis added)*
- (1) That it is not reasonably economically or physically feasible to make the use of the property compatible with the applicable general plan designation; and*
  - (2) That the use is, and, after expansion, will be compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated; and*
  - (3) That the site is physically separate from surrounding properties such that continued nonconforming use is appropriate in that location; and*
  - (4) The expansion is found consistent with all other applicable policies of the Coastal Element of the Mendocino County General Plan.*

- (B) *A legal nonconforming mobile home may be replaced by a new mobile home without a use permit if no use permit was required for the original installation. (Ord. No. 3785 (part), adopted 1991)*

The proposed project is intended to expand an existing winery that was originally approved by the Commission in 1988 pursuant to Permit No. 1-88-19 (Goldenberg). The Commission approved the existing winery as being consistent with the agricultural land use designation specified under the certified LUP at the time of approval. The County's LUP designation for Agriculture (AG) has generally allowed the processing of agricultural products as a principally permitted use in Agriculture (AG) districts, including wineries. The original approval was granted after certification of the LUP, but prior to certification of the County's Coastal Zoning Ordinance and transfer of coastal development permit authority to the County. However, pursuant to the more specific standards of Zoning Code Sections 20.356.010 and 20.356.015, which were enacted after the existing winery was established, wineries are neither a principally permitted use nor an allowable conditional use in agricultural zoning districts within the Mendocino County coastal zone. Zoning Code Section 20.336.035 differentiates "Packing and Processing: Winery" and "Packing and Processing: Limited" as two distinct use types, and the Coastal Zoning Code only allows "Packing and Processing: Limited" and not "Packing and Processing: Winery" as an allowable conditional use type within agricultural zoning districts. The subject property is zoned as Agricultural (AG-60) under the County's current LCP. Consequently, pursuant to Section 20.480.005(A), the existing winery is a legal non-conforming use as it is a use that was lawfully established and maintained prior to the adoption of the Coastal Zoning Ordinance but does not conform to the current regulations for the zone.

The preamble of Zoning Code Section 20.480.025 states that a non-conforming use can only be expanded or reduced to a use of lesser intensity (emphasis added). Because of the ambiguity inherent in this policy language and because Zoning Ordinances typically strive to promote the elimination of non-conforming uses rather than facilitate their expansion, the Commission staff initially interpreted Zoning Code Section 20.480.025 to mean that Non-conforming uses could only be expanded to uses of lesser intensity. As a result of this interpretation, staff initially recommended denial of the proposed development, in part because the project is an expansion of non-conforming use that was thought to be inconsistent with Zoning Code Section 20.480.025. However, during the March 15, 2000 Commission meeting, the Commission directed staff to further investigate the legislative intent of Zoning Code Section 20.480.025 and re-evaluate the project's conformance with this zoning provision. Based on subsequent research and consultation with County staff, it appears that it was always the County Board of Supervisors intention to allow the expansion of a non-conforming uses to uses of either lesser or increased intensity. Furthermore, County staff have indicated that they have interpreted and implemented Zoning Code Section 20.480.025 to allow the expansion of legal nonconforming uses to uses of increased intensity and that they believe that Coastal Commission staff's original interpretation of the policy was incorrect (Exhibit 13). Based on this clarification of the intent of Zoning Code Section 20.480.025, the

Commission finds that the expansion of the proposed non-conforming winery use is consistent with Zoning Code 20.480.025.

Zoning Code Section 20.480.025 also indicates that a non-conforming use can only be expanded if the expansion is found consistent with all other applicable policies of the Coastal Element of the Mendocino County General Plan and other additional criteria. These criteria include requirements that (1) it is not reasonably economically or physically feasible to make the use of the property compatible with the applicable general plan designation; (2) the use is, and after expansion will be, compatible with adjacent land uses and that any increased adverse impacts on access or public facilities and services will be mitigated; and (3) the site is physically separate from surrounding properties such that continued nonconforming use is appropriate in that location.

With regard to applicable general plan policies, the expansion of the winery would encourage the economic viability of the agricultural operation consistent with LUP policy 3.2-4. As noted above, the Coastal Zoning Ordinance does not permit “Packing and Processing: Winery” as an allowable conditional use type within agricultural zoning districts. However, the County’s LUP designation for Agriculture has allowed processing uses associated with agricultural operations in a more general sense and the LUP does not differentiate or exclude packaging and processing uses associated with winery operations. Therefore the proposed winery and tasting room are consistent with the applicable general plan designation. Additionally, the proposed development would be compatible with adjacent land uses and would be physically separate from the surrounding properties as the property is bounded by the Highway One to the east, the Pacific Ocean to the west, Kibesillah Creek to the south, a similarly zoned vacant parcel to the north (also owned by the applicant), and a Caltrans vista point further to the north. Furthermore, the development exceeds all the required set backs established for the Agricultural zoning district. Therefore, for the reasons stated above, the expansion of the winery operation itself would be an expansion of an existing legal non-conforming use consistent with the provisions of Zoning Code Section 20.480.025.

However, the establishment of a new commercial wine tasting facility and the associated on-site retail sales use, would not be consistent with existing LCP, specifically Zoning Code section 20.356.010 which does not allow for new commercial wine tasting facilities in agricultural zoning districts within the coastal zone. Pursuant to Zoning Code Section 20.336.035(B), tasting rooms are only allowed in conjunction with the “*packing and processing: winery*” use type. Although the winery was approved by the Commission in 1988 pursuant to Coastal Development Permit No. 1-88-19 (Goldenberg), no commercial wine tasting facility or retail sales use was ever approved on the subject property. Therefore, the proposed new commercial wine tasting facility would be a new non-conforming use of the property. Although Section 20.480.025 allows for expansion of existing legal nonconforming uses, the section does not allow for the establishment of new legal nonconforming uses.

Therefore, the Commission attaches Special Condition No. 4, which requires recordation of deed restriction stating that the winery shall not be used for commercial wine tasting or

on-site retail sales. Special Condition No. 4 will effectively eliminate the proposed commercial wine tasting use to ensure that no new uses are established which do not conform with the allowable uses in agricultural zoning districts.

The Commission finds that as conditioned, the proposed project is consistent with the LCP policies pertaining to the expansion of non-conforming uses, including Zoning Code Section 20.480.025, as the proposed development meets the standards required for an expansion of a non-conforming use.

LUP policy 3.2-4 allows for compatible activities that enhance the economic viability of agricultural lands if the project meets a number of the specific criteria.

These criteria are that the project shall:

- maximize protection of environmentally, sensitive habitats;
- minimize construction of new roads and other facilities;
- maintain views from beaches, public trails, roads and views from public viewing areas, or other recreational areas;
- ensure adequacy of water, sewer and other services;
- ensure preservation of the rural character of the site; and
- maximize preservation of prime agricultural soils;
- ensure existing compatibility by maintaining productivity of on site and adjacent agricultural lands.

The project, as conditioned to eliminate the commercial wine tasting use and reduce the height of the barn structure, meets these criteria. The proposed project maximizes the protection of sensitive coastal resources by being sited out of and away from any on-site or adjacent environmentally sensitive habitat areas. The project has been designed to utilize existing roads and no new roads will be constructed as a result of the proposed development. Furthermore, the approved facilities have been designed only to accommodate the processing of agricultural products. As conditioned, the project will be visually subordinate to the surrounding area, protect visual resources, and maintain the agricultural and rural character of the area (see finding No. 3 above regarding visual resources). Additionally, existing on-site water and sewer services are adequate to serve the proposed development (see Finding No. 1 above Planning and Locating New Development).

Therefore, the Commission finds the proposed project, as conditioned, to be consistent with the Certified LCP, including LCP policy 3.2-4, as the proposed development meets the required standards to be a permitted use on an agricultural parcel; the proposed development has been sited on a portion of the 15-acre parcel where it will have the least amount of adverse impacts on existing and future agricultural production, while still having minimal visual impacts; and the agricultural productivity of the property will be protected and maintained.



2. Locating and Planning New Development

Policy 3.9-1 of the Mendocino County Land Use Plan states that new development shall be located within or near existing developed areas able to accommodate it or in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The intent of this policy is to channel development toward more urbanized areas where services are provided and potential impacts to resources are minimized.

Policy 3.8-1 states that Highway 1 capacity, availability of water and sewage disposal systems and other know planning factors shall be considered when considering applications for development permits.

The subject property is zoned in the County's LCP as Agricultural which has a 60 acre minimum parcel size in the coastal zone. The subject parcel, which is approximately 15 acres in size, is a legal, non-conforming parcel. The site is located within a critical water resource area, as defined by the Coastal Ground Water Study. The site is served by onsite wells and septic systems and the applicant has indicated that the expanded winery operation will only result in a 5 percent increase of water use.

In June of 1989 the Commission issued Emergency Permit No. 1-89-3G for a new water supply well on the subject property to replace the existing well that had gone dry. In October of 1989, Amendment No. 1-88-19-A was issued to Jacob Goldenberg to authorize the replacement well on a permanent basis. In February of 1991, Mr. Goldenberg submitted an application to the Commission for another amendment to Coastal Development Permit No. 1-88-19, which included a request to withdraw surface water from Kibesillah Creek. However, a complete application was never received by the Commission and consequently the application for permit amendment was ultimately returned to the applicant and never processed by the Commission. According to the State Water Resources Control Board's Division of Water Rights staff, there are no permitted water rights along Kibesillah Creek in the vicinity of the subject property (Inglenook Quadrangle, Section 17, T 20N, R 17W) nor are there any Statements of Water Diversion and Use on file with the Division of Water Rights in the vicinity of the proposed project. The applicant could potentially use water from Kibesillah Creek by filing a Statement of water Diversion and Use with the Division of Water Rights. However, an alleged claim of riparian water rights must be adjudicated by a superior court of law before such a claim would become an actual water right. Therefore, there is no evidence to suggest that the applicant has a right to divert surface water from Kibesillah Creek and the adequacy of the water supply to serve the proposed development must be based on water yields from existing on-site wells.

The Mendocino County Department of Environmental Health and the Mendocino County Water Agency have reviewed the proposed project and have determined that the increased production level requested will not significantly increase water demand due to the limited peak season use and the coastal environment. According to the Mendocino

County Department of Environmental Health, the proposed project constitutes a minor water use, as it will require significantly less than 1,500 gallons of water per day. Pursuant to the Mendocino County Coastal Groundwater Development Guidelines, projects involving minor water uses do not require hydrological studies to be conducted to determine if sufficient water exists to serve proposed developments. Mendocino County has determined that the existing onsite wells and septic system are adequate for the operation.

Therefore, the Commission finds, therefore, that the proposed development, as conditioned, is consistent with LUP Policies 3.8-1 and 3.9-1, because there will be adequate services on the site to serve the proposed development.

3. Geologic Hazards:

LUP Policy 3.4-7 states that:

*The County shall require that new structures be set back a sufficient distance from the edges of bluffs to ensure their safety from bluff erosion and cliff retreat during their economic life spans (75 years). Setbacks shall be of sufficient distance to eliminate the need for shoreline protective works. Adequate setback distances will be determined from information derived from the required geologic investigation and from the following setback formula:*

$$\text{Setback (meters)} = \text{Structure life (years)} \times \text{Retreat rate (meters/year)}$$

*The retreat rate shall be determined from historical observation (e.g., aerial photographs) and/or from a complete geotechnical investigation.*

*All grading specifications and techniques will follow the recommendations cited in the Uniform Building Code or the engineering geologist's report.*

This language is reiterated in Zoning Code Section 20.500.020(B).

LUP Section 3.4-8 states that:

*Property owners should maintain drought-tolerant vegetation within the required blufftop setback. The County shall permit grading necessary to establish proper drainage or to install landscaping and minor improvements in the blufftop setback.*

LUP 3.4-9 states that:

*Any development landward of the blufftop setback shall be constructed so as to ensure that surface and subsurface drainage does not contribute to the erosion of the bluff face or to the instability of the bluff itself.*

Zoning Code Section 20.500.010 states that development shall:

- (1) *Minimize risk to life and property in areas of high geologic, flood and fire hazard;*
- (2) *Assure structural integrity and stability; and*
- (3) *Neither create nor contribute significantly to erosion, geologic instability or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Zoning Code Section 20.500.020(B) states that

*Construction landward of the setback shall not contribute to erosion of the bluff face or to instability of the bluff.*

LCP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1) state that

*Seawalls, breakwaters, revetments, groins, harbor channels and other structures altering natural shoreline processes or retaining walls shall not be permitted unless judged necessary for the protection of existing development, public beaches or coastal dependent uses.*

The geotechnical investigation report initially prepared and submitted for the project by BACE Geotechnical, dated April 22, 1999, states that “*local bluff retreat rate, due to wave erosion and/or landsliding within the upper bluffs, appears relatively small, probably four to five inches per year as an average locally that could be as much as several feet during one occurrence.*” The report concludes that based on a bluff retreat rate of five inches per year, the bluff could erode back a total of 31-1/4 feet with a 75-year period and that a 65-foot setback (which incorporates a two-fold safety factor) should be adequate to protect the structure.

The proposed new barn is sited 65 feet from the bluff edge, the minimum distance recommended by the geotechnical reports. The proposed addition to the existing building is sited seaward of the existing building, closer to the bluff edge. The proposed new addition to the existing building would be located over 150 feet away from the bluff edge.

To ensure that the project will not create any geologic hazards, the Commission has attached to the permit several Special Conditions. Special Condition No. 1 requires submittal of final foundation and site drainage plans that incorporate all recommendations of the geotechnical reports and addendum, intended to avoid creating a geologic hazard. Special Condition No. 1 also requires development to proceed consistent with the certified plans. This condition reiterates a similar condition that was required by Mendocino County in their original approval of the project.

In accordance with the provisions of Section 13253(b)(6) of Title 14 of the California Code of regulations, the Commission also attaches Special Condition No. 4 which requires recordation of a future development deed restriction. Section 30610(b) of the Coastal Act exempts certain additions to existing structures other than single family residential structures from coastal development permit requirements. Thus, once the development has been constructed, certain additions and accessory buildings that the applicant might propose in the future could be exempt from the need for a permit or permit amendment. However, depending on its nature, extent, and location, such an addition or accessory structure could contribute to geologic hazards at the site. For example, installing a landscape irrigation system on the property in a manner that leads to saturation of the bluff would increase the potential for landslides or catastrophic bluff failure. Another example would be installing a sizable addition for additional storage, or other uses normally associated with a winery in a manner that does not provide for the collection, conveyance, and discharge of roof runoff to areas away from the bluff edge. Such runoff to the bluff edge could potentially exacerbate bluff erosion at the subject site.

To avoid such impacts to coastal resources from the development of otherwise exempt additions to existing structures, Section 30610(b) requires the Commission to specify by regulation those classes of development which involve a risk of adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(b) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of regulations. Section 13253(b)(6) specifically authorizes the Commission to require a permit for additions to structures other than existing single family residences that could involve a risk of adverse environmental effect by indicating in the development permit issued for the original structure that any future improvements would require a development permit. As noted above, certain additions or improvements to the approved structure could involve a risk of creating geologic hazards at the site. Therefore, in accordance with provisions of Section 13253(b)(6) of Title 14 of the California Code of Regulations, the Commission attaches Special Condition No. 4 which requires that all future development on the subject parcel that might otherwise be exempt from coastal permit requirements requires an amendment or coastal development permit. This condition will allow future development to be reviewed by the Commission to ensure that future improvements will not be sited or designed in a manner that would result in a geologic hazard. Special Condition No. 4 also requires recordation of a deed restriction to ensure that all future owners of the property are aware of the requirement to obtain a permit for development that would otherwise be exempt. Recordation of a deed restriction will reduce the potential for future landowners to make improvements to the winery buildings without first obtaining a permit as required by this condition.

The Commission also attaches Special Condition No. 2, which prohibits the construction of shoreline protective devices on the parcel and requires that the landowner provide a geotechnical investigation and remove a building and its foundation if bluff retreat reaches the point where the structure is threatened, and that the applicant accepts sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion of the site.

These requirements are consistent with LUP policy 3.4-7 and Section 20.500.010 of the Mendocino County Coastal Zoning Ordinance, which states that new development shall minimize risk to life and property in areas of high geologic, flood, and fire hazard, assure structural integrity and stability, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding areas, nor in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission finds that the proposed development could not be approved as being consistent with Zoning Code Section 20.500.010 if projected bluff retreat would affect the proposed building additions and necessitate construction of a seawall to protect them.

In addition, LUP Policy 3.4-12 and Zoning Code Section 20.500.020(E)(1) allow the construction of shoreline protective devices only for the protection of existing development. The construction of a shoreline protective device to protect new development is not permitted by the LCP. In addition, as discussed further below, the construction of a protective device to protect new development would also conflict with the visual policies of the certified LCP.

The applicant is proposing to construct a new barn and a 2,271-square foot addition to an existing winery/residence building. The proposed addition to the existing building is sited seaward of the existing building, closer to the bluff edge. The new barn and building addition will be located on a 40 to 60-foot-high bluff top that is gradually eroding. According to the geotechnical report prepared for the project, several small sea caves, approximately 10 to 15 feet wide, by about 10 feet high, penetrate about 10 to 20 feet into the toe of the bluff. The site also contains two landslides along the blufftop, the largest of which measures approximately 30 feet high by 40 feet wide. Thus, the new structures would be located in an area of high geologic hazard. The new development can only be found consistent with the above-referenced provisions if the risks to life and property from the geologic hazards are minimized and if a protective device would not be needed in the future. The applicant has submitted information from a geologist which states that if the new development is set back 65 feet from the bluff edge, it would be safe from erosion and would not require any devices to protect the proposed development during its useful economic life.

Although a geotechnical evaluation is a necessary and useful tool that the Commission relies on to determine if proposed development is appropriate at all on any given blufftop site, the Commission finds that a geotechnical evaluation alone is not a guarantee that a development will be safe from bluff retreat. It has been the experience of the Commission that in some instances, even when a thorough professional geotechnical analysis of a site has concluded that a proposed development will be safe from bluff retreat hazards, unexpected bluff retreat episodes that threaten development during the life of the structure sometimes still do occur. Examples of this situation include:

- The Kavich Home at 176 Roundhouse Creek Road in the Big Lagoon Area north of Trinidad (Humboldt County). In 1989 the Commission approved the construction of a new house on a vacant blufftop parcel (Permit 1-87-230). Based on the

geotechnical report prepared for the project it was estimated that bluff retreat would jeopardize the approved structure in about 40 to 50 years. In 1999 the owners applied for a coastal development permit to move the approved house from the blufftop parcel to a landward parcel because the house was threatened by 40 to 60 feet of unexpected bluff retreat that occurred during a 1998 El Nino storm event. The Executive Director issued a waiver of coastal development permit (1-99-066-W) to authorize moving the house in September of 1999.

- The Denver/Canter home at 164/172 Neptune Avenue in Encinitas (San Diego County). In 1984 the Commission approved construction of new house on a vacant blufftop lot (Permit 6-84-461) based on a positive geotechnical report. In 1993, the owners applied for a seawall to protect the home (Permit Application 6-93-135). The Commission denied the request. In 1996 (Permit Application 6-96-138), and again in 1997 (Permit Application 6-97-90) the owners again applied for a seawall to protect the home. The Commission denied the requests. In 1998, the owners again requested a seawall (Permit Application 6-98-39) and submitted a geotechnical report that documented the extent of the threat to the home. The Commission approved the request on November 5, 1998.
- The Bennett home at 265 Pacific Avenue, Solana Beach (San Diego County). In 1995, the Commission approved a request to construct a substantial addition to an existing blufftop home (Permit 6-95-23). The minimum setback for the area is normally 40 feet. However, the applicants agreed to waive future rights to shore/bluff protection if they were allowed to construct 25 feet from bluff edge based on a favorable geotechnical report. The Commission approved the request on May 11, 1995. In 1998, a substantial bluff failure occurred, and an emergency permit was issued for a seawall. The follow-up regular permit (#6-99-56) was approved by Commission on May 12, 1999. On August 18, 1999, the Commission approved additional seawall and upper bluff work on this and several other properties (Permit #6-99-100).
- The McAllister duplex at 574 Neptune Avenue, Encinitas (San Diego County). In 1988, the Commission approved a request to construct a duplex on a vacant blufftop lot (Permit #6-88-515) based on a favorable geotechnical report. By October 1999, failure of the bluff on the adjoining property to the south had spread to the bluff fronting 574 Neptune. An application is pending for upper bluff protection (Permit #6-99-114-G).
- The Arnold project at 3820 Vista Blanca in San Clemente (Orange County). Coastal development permit (Permit # 5-88-177) for a blufftop project required protection from bluff top erosion, despite geotechnical information submitted with the permit application that suggested no such protection would be required if the project conformed to 25-foot blufftop setback. An emergency coastal development permit (Permit #5-93-254-G) was later issued to authorize blufftop protective works.

The Commission notes that the examples above are not intended to be absolute indicators of bluff erosion on the subject parcel, as coastal geology can vary significantly from location to location. However, these examples do illustrate that site specific geotechnical evaluations cannot always accurately account for the spatial and temporal variability associated with coastal processes and therefore cannot always absolutely predict bluff erosion rates. Collectively, these examples have helped the Commission form its opinion on the vagaries of geotechnical evaluations with regard to predicting bluff erosion rates.

In this case, the uncertainty of the conclusions of the geotechnical analysis is heightened because the geotechnical report that has been prepared to date does not include any quantitative analysis explaining how a bluff retreat rate of four to five inches per year was determined. The recommendations in the geotechnical report are founded, in part, on the review of aerial photographs taken between 1964 and 1981; however, the geotechnical report does not specifically state how much bluff retreat has occurred between 1964 and 1981. The geotechnical report only states that:

*“review of the 1964 and 1981 aerial photograph enlargements, compared with what is visible now, show no major changes at the proposed barn site...local bluff retreat, due to wave erosion and or landsliding within the upper bluffs, appears relatively small, probably four to five inches per year as an average (locally that could be as much as several feet during one occurrence).”*

The geotechnical report is also based on comparisons of aerial photographs and current site conditions, however there is no discussion of how these comparisons were made. Furthermore, the BACE geotechnical report states that their geological and engineering services and review of the proposed development was performed in accordance with the usual and current standards of the profession, as they relate to this and similar localities. *“No other warranty, expressed or implied, is provided as to the conclusions and professional advice presented in the report.”* This language in the report itself is indicative of the underlying uncertainties of this and any geotechnical evaluation and supports the notion that no guarantees can be made regarding the safety of the proposed development with respect to bluff retreat.

In the Commission's experience, geologists have no way of absolutely predicting if or when bluff erosion on a particular site will take place, and cannot predict if or when a house or property may become endangered. Geologic hazards are episodic, and bluffs that may seem stable now may not be so in the future. Therefore, the Commission finds that the subject lot is an inherently hazardous piece of property, that the bluffs are clearly eroding, and that the proposed new development will be subject to geologic hazard and may someday require a bluff or shoreline protective device, inconsistent with Zoning Code Section 20.500.010. Based upon the geologic report, the Commission finds that the risks of geologic hazard are minimized if the structures are set back at least 65 feet from the bluff edge. However, given that the risk cannot be eliminated and the geologic report does not assure that shoreline protection will never be needed to protect the structures, the Commission finds that the proposed development is consistent with the certified LCP

only if it is conditioned to provide that shoreline protection will not be constructed. Thus, the Commission further finds that due to the inherently hazardous nature of this parcel, the fact that no geology report can conclude with any degree of certainty that a geologic hazard does not exist, the fact that the approved development and its maintenance may cause future problems that were not anticipated, and because new development shall not engender the need for shoreline protective devices, it is necessary to attach Special Condition No. 2 requiring a deed restriction prohibiting the construction of seawalls and Special Condition No. 3 requiring a deed restriction waiving liability.

As noted above, some risks of an unforeseen natural disaster, such as an unexpected landslide, massive slope failure, erosion, etc. could result in destruction or partial destruction of the barn or other development approved by the Commission. In addition, the development itself and its maintenance may cause future problems that were not anticipated. When such an event takes place, public funds are often sought for the clean up of structural debris that winds up on the beach or on an adjacent property. As a precaution, in case such an unexpected event occurs on the subject property, the Commission attaches Special Condition No. 2(A)(2), which requires the landowner to accept sole responsibility for the removal of any structural debris resulting from landslides, slope failures, or erosion on the site, and agree to remove the house should the bluff retreat reach the point where a government agency has ordered that the structure not be occupied.

The Commission finds that Special Condition No. 2 is required to ensure that the proposed development is consistent with the LCP and that recordation of the deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely into the future, or that a seawall could be constructed to protect the development.

Additionally, the Commission attaches Special Condition No. 3, which requires the landowner to assume the risks of extraordinary erosion and geologic hazards of the property and waive any claim of liability on the part of the Commission. Given that the applicant has chosen to implement the project despite these risks, the applicant must assume the risks. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand hazards. In addition, the condition ensures that future owners of the property will be informed of the risks, the Commission's immunity from liability, and the indemnity afforded the Commission.

The Commission thus finds that the proposed development, as conditioned, is consistent with the policies of the certified LCP regarding geologic hazards, including LUP Policies 3.4-7, 3.4-8, 3.4-9, 3.4-12, and Zoning Code Sections 20.500.010 and 20.500.020, as the proposed development will not result in the creation of any geologic hazards, will not have adverse impacts on the



stability of the coastal bluff or on erosion, and the Commission will be able to review any future additions to ensure that development will not be located where it might result in the creation of a geologic hazard. Only as conditioned is the proposed development consistent with the LCP policies on geologic hazards.

4. Visual Resources.

LUP Policy 3.5-1 states in applicable part:

*The scenic and visual qualities of Mendocino County coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas and, where feasible, to restore and enhance visual quality in visually degraded areas.*

LUP Policy 3.5-3 states in applicable part:

*The visual resource areas listed below are those which have been identified on the land use maps and shall be designated as “highly scenic areas,” within which new development shall be subordinate to the character of its’ setting. Any new development permitted in these areas shall provide for protection of ocean and coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

*The entire coastal zone from the Ten Mile River estuary (including its wooded slopes, wetlands, dunes and ocean vistas visible from Highway 1) north to the Hardy Creek Bridge, except Westport Beach Subdivision which is a recognized subdivision containing parcels of approximately 20 acres in size covered by Policy 4.2-1 and is East of Highway 1.*

*In addition to other visual policy requirements, new development west of Highway One in designated ‘highly scenic areas’ is limited to one-story (above natural grade) unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. ...New development should be subordinate to the natural setting and minimize reflective surfaces. ...*

LUP Policy 3.5-7 states that:

*Off site advertising signs, other than small directional signs not exceeding 2 square feet, will not be permitted in designated ‘highly scenic areas.’ Direction, access, and business identification signs shall minimize disruption of scenic qualities through appropriate use of materials, scale and location. Caltrans should be requested to develop and install a system of small standardized highway signs which will identify, by easily recognized symbols, a full range of visitor services and accommodations,*

*including restaurants, inns, and campgrounds. Appropriate handcrafted signs should be encouraged.*

Zoning Code Section 20.356.040 **Building Height Limit for AG Districts**, in relevant part limits building heights to:

*Twenty-eight (28) feet above natural grade for non-Highly Scenic Areas and for Highly Scenic Areas east of Highway One. Eighteen feet above natural grade for Highly Scenic Areas west of Highway One unless an increase in height would not affect public views to the ocean or be out of character with surrounding structures. ...*

Zoning Code Section 20.308.110 **Definitions (S)** states in relevant part that:

(21) *‘Sign, Off-Site’ means any signs as defined in this section other than an onsite sign.*

(22) *‘Sign, On-Site’ means a sign which pertains and is accessory to a business or other use located on the same lot or which offers a lot or portion thereof for sale.*

Zoning Code Section 20.476.025 states in relevant part that:

*The following standards shall apply to all on-site signs:*

(D) *Signs shall not block public views of the ocean*

(J) *...the total square footage of all signs on a lot may not exceed forty (40) square feet...*

Zoning Code Section 20.504.015(C)(1) states that:

*Any development permitted in highly scenic areas shall provide for the protection of coastal views from public areas including highways, roads, coastal trails, vista points, beaches, parks, coastal streams, and waters used for recreational purposes.*

Zoning Code Section 20.504.015(C)(3) states that:

*New development shall be subordinate to the natural setting and minimize reflective surfaces. In highly scenic areas, building materials including siding and roof materials shall be selected to blend in hue and brightness with their surroundings.*

Zoning Code Section 20.504.035(A)(2) states that:

*Where possible, all lights shall be shielded or positioned in a manner that will not shine light or allow glare to exceed the boundaries of the parcel on which it is placed.*

The proposed development would be located within a designated highly scenic area west of Highway One. The portion of the coast on which the subject site is located is between Dehaven and Newport, and is largely wide-open, affording sweeping blue and white water views to motorists traveling on Highway One. The site is also visible from a Caltrans scenic vista point located to the north of the property. This stretch of coast is extremely scenic and has a very different character than the more developed portions of the Mendocino Coast.

An existing 30-foot-tall, 2,600-square-foot barn building, a gravel driveway, three 5,000-gallon water tanks, and a test-plot vineyard were developed pursuant to Coastal Development Permit No. 1-88-19 that was issued by the Commission in 1988. As mentioned above, the site consists of two marine terraces. The upper terrace slopes gently to the southwest from an elevation of approximately 120 feet at Highway One to an elevation of 75 feet at the break in slope to the lower terrace. There is approximately 10 to 20 feet of vertical separation between the upper and lower terraces. The lower terrace ranges in height from 40 to 60 feet above the ocean. Aside from the vineyard, the site is primarily vegetated with grasses, which provides very little screening of the development from public viewpoints. The existing development is situated on the lower terrace approximately 800 feet away from Highway One. The break in slope between the upper and lower terrace shields the bottom portion of the existing structure from public view. Additionally, the existing barn is oriented on a perpendicular axis to Highway One, which further lessens its appearance from public viewpoints along the highway. However, the existing barn does protrude into the public viewshed and slightly blocks a small portion of an otherwise expansive blue water view.

Visual resources and building height limitations:

The proposed development includes the construction of a 22-foot-tall, two-story barn with a 2,640-square-foot footprint, a 2,271-square-foot addition to an existing building, and a 32-square-foot sign. The proposed barn building is actually 28 feet tall as measured from the base of the structure to its tallest point at the roof ridgeline and the County staff report prepared for the project indicated that the proposed barn would be 28 feet tall. However, the structure has been designed to be partially sunken below the natural grade and the height of the barn is actually an average of 22 feet above natural grade, as measured pursuant to County guidelines for determining building heights (Exhibit 12). This method involves averaging the maximum actual heights of the building above grade at each end of the structure.

Although the guidelines have been used by the County to determine the height of a structure above natural grade since certification of the LCP, the guidelines were never submitted for certification by the Commission. Thus, the Commission is not bound to use the guidelines as the means to determine the height of the proposed barn structure. However, the Commission finds that the method the County uses to determine building height under the guidelines is reasonable and appropriate in this case.

LCP Policy 3.5-3 requires that new development located within highly scenic areas must be limited to one story and must be subordinate to the character of its setting. Mendocino County Zoning Code Section 20.356.040 further states that new development located within designated highly scenic areas shall be limited to 18 feet above natural grade unless an increase in height would not affect public views to the ocean. Based on the information submitted by the applicant, the proposed 2,271-square-foot building addition would extend from the seaward side of the existing barn and would not be visible from public vantage points along Highway One.

The Commission notes that the proposed development takes advantage of the site's natural topography by locating the proposed structures approximately 800 feet away from Highway One on the site's lower terrace which decreases the appearance of the new proposed structures from public vantage points near and along Highway One. The proposed barn at 22 feet would be lower than the existing barn and would appear subordinate to the existing 30-foot-tall barn. Additionally, since the proposed barn has been designed in approximate parallel location relative to the existing barn, it will appear to be superimposed on to the existing barn as viewed from a southern approach on Highway One. Vice versa, the existing barn would somewhat block the view of the proposed barn when approaching from the north. These features help make the proposed development more compatible with the character of its setting. However, the proposed 22-foot-tall barn would be still visible from multiple public vantagepoints along the highway and the barn would block a small portion of the expansive blue and whitewater views.

The applicant emphasizes that the barn must be constructed as proposed (28 feet tall from base to ridgeline) to accommodate winery operations and that decreasing the structure height is not a viable option. The applicant also states that sinking the structure further below the ground surface would require excessive excavation and would be cost prohibitive should foundation excavations encounter hard rock material. However, as proposed by the applicant, the barn would be sunken approximately 12 feet below natural grade, at it's lowest point. There is no geotechnical evidence to suggest that digging the foundation excavations four feet deeper would be infeasible.

The applicant further asserts that the proposed 22-foot-tall building would only constitute a minimal exceedence over the 18-foot height limitation and the 4 foot-exceedence would appear to be minimal given the viewing distance from Highway One. Despite the applicant's assertion, the proposed 22-foot-tall barn would clearly affect public views to the ocean as it would block blue and whitewater views from various public vantage points. Additionally, the proposed barn, at 22 feet tall above natural grade, would be inconsistent with Mendocino County Zoning Coastal Code Section 20.356.040. Therefore, to minimize the blockage of the water views and ensure that the project will not create any adverse visual impacts that are inconsistent with the certified LCP, the Commission attaches Special Condition No. 5 which requires submittal of final site and construction plans, for review and approval of the Executive Director, indicating that the barn will be reduced in height to a maximum of 18 feet tall above natural grade (as measured pursuant to the guidance provided by Mendocino County in Exhibit 12).

Special Condition No. 5 also requires development to proceed consistent with the final approved plans.

Visual resources and character of development:

LUP Policy 3.5-3 states that new development within designated Highly Scenic Areas west of Highway One should be subordinate to its natural setting. As mentioned above many features of the proposed development have been designed to minimize the projects appearance and to keep the development subordinate to it's natural setting. However, given the extreme beauty of the site and the scenic quality of the surrounding area, the project as proposed would not be completely subordinate to the character of the area, as the proposed barn would still be very visible from Highway 1.

The Commission has attached a number of special conditions to ensure that the proposed development remains subordinate to the surrounding area. Special Condition No. 4 requires the applicant to record a deed restriction stating that the proposed development will not be used for commercial wine tasting or on-site retail sales purposes. Special Condition No. 4 will ensure that proposed development will be consistent with LUP policy 3.5-3 and Zoning Code Section 20.504.015(C)(3), by reducing the intensity of use of the site and keeping the development subordinate to the agricultural and open space character of the surrounding area.

The Commission also attaches Special Condition No. 6, which imposes design restrictions, including a requirement that all exterior siding and roofing of the proposed structure shall be of natural or natural-appearing materials of dark earthtone colors only; that all exterior materials, including the roof and the windows, shall be non-reflective to minimize glare; and that all exterior lights, including any lights attached to the outside of the house, shall be low-wattage, non-reflective, and have a directional cast downward. These requirements are consistent with the provisions of Zoning Code Sections 20.504.020(C) and 20.504.035(A)(2).

The Commission also attaches Special Condition No. 4, which requires recordation of a deed restriction stating that all future development on the subject parcel that might otherwise be exempt from coastal permit requirements requires an amendment or coastal development permit. This condition will allow future development to be reviewed to ensure that the project will not be sited or developed in a manner where it might have significant adverse impacts on visual and scenic resources.

Visual resources and sign limitations:

As noted above, the proposed development includes a 40-square-foot on-site sign. Mendocino County Coastal Zoning Code states that "*signs shall not block public views of the ocean.*" However, due to the open nature of the site, a forty-square-foot sign could potentially block public views to the ocean. To ensure that the proposed sign will not block public views to the ocean, the Commission attaches Special Condition No. 2, which, in part, requires the applicant to submit a sign plan for review and approval of the Executive Director. Special Condition No. 2 effectively requires that only 1 sign

constructed of wood and a maximum of 32 square feet and a maximum of 15 feet tall be permitted on the property. Additionally, Special Condition No. 2 requires that the sign be located at least 150 feet from the centerline of Highway One. This condition will ensure the sign is not erected within the Caltrans right-of-way and reiterates a similar condition that was required by Mendocino County in their original approval of the project.

In conclusion, although the proposed development will be somewhat visible from Highway 1 and the Caltrans vista point to the north, visual impacts have been minimized by requiring dark earthtone colors for the structure and requiring lighting restrictions. Furthermore, Special Condition No. 4 will eliminate the tasting room and ensure that the development maintains the agricultural character of its surroundings and remains subordinate to the landscape. Special Condition No 5 limits the building height to 18 feet, and limits the size, height, location, and number of on-site signs. The Commission thus finds that the proposed development, as conditioned, is consistent with LUP Policies 3.5-1, 3.5-3, and 3.5-5, and with Zoning Code Sections 20.376.045, 20.504.015, 20.504.020, 20.504.035, and 20.504.040, as the project has been sited and designed to minimize visual impacts, will be subordinate to the character of its setting and will provide for the protection of coastal views.

5. Environmentally Sensitive Habitat Area and Water Quality.

LUP Policy 3.1-2 states in applicable part:

*Development proposals in environmentally sensitive habitat areas such as wetlands, riparian zones on streams or sensitive plant or wildlife habitats (all exclusive of buffer zones) including, but not limited to those shown on the Land Use Maps, shall be subject to special review to determine the current extent of the sensitive resource. Where representatives of the County Planning Department, the California Department of Fish and Game, the California Coastal Commission, and the applicant are uncertain about the extent of sensitive habitat on any parcel such disagreements shall be investigated by an on-site inspection by the landowner and/or agents, County Planning Department staff member, a representative of California Department of Fish and Game, a representative of the California Coastal Commission. The on-site inspection shall be coordinated by the County Planning Department and will take place within 3 weeks, weather and site conditions permitting, of the receipt of a written request from the landowner/agent for clarification of sensitive habitat areas.*

*If all of the members of this group agree that the boundaries of the resource in question should be adjusted following the site inspection, such development should be approved only if specific findings are made which are based upon substantial evidence that the resource as identified will not be significantly degraded by the proposed development. If such findings cannot be made, the development shall be denied. Criteria used for determining the extent of wetlands and other wet environmentally sensitive habitat areas are found in Appendix 8 and shall be used when determining the extent of wetlands.*

LUP Policy 3.1-7 states in applicable part:

*A buffer area shall be established adjacent to all environmentally sensitive habitat areas. The purpose of this buffer area shall be to provide for a sufficient area to protect the environmentally sensitive habitat from significant degradation resulting from future developments. The width of the buffer area shall be a minimum of 100 feet, unless an applicant can demonstrate, after consultation and agreement with the California Department of Fish and Game, and County Planning Staff, that 100 feet is not necessary to protect the resources of that particular habitat area from possible significant disruption caused by the proposed development. The buffer area shall be measured from the outside edge of the environmentally sensitive areas and shall not be less than 50 feet in width...*

LUP Policy 3.1-10 states in applicable part:

*Areas where riparian vegetation exists, such as riparian corridors, are environmentally sensitive habitat areas and development within such areas shall be limited to only those uses which are dependent on the riparian resources. All such areas shall be protected against any significant disruption of habitat values by requiring mitigation for those uses which are permitted. No structure or development, including dredging, filling, vegetation removal and grading, which could degrade the riparian area or diminish its value as a natural resource shall be permitted in the Riparian Corridor except for...*

LUP Policy 3.1-11 states that:

*The implementation phase of the LCP shall include performance standards which shall be consistent with California Coastal Commission's Statewide Interpretive Guidelines for Wetlands and other wet Environmentally Sensitive Habitat Areas dated February 4, 1981, and required mitigation measures applicable to allowable development within Riparian Corridors. These standards and measures shall minimize potential development impacts such as increased runoff, sedimentation, biochemical degradation, increased stream temperatures and loss of shade caused by development. When development activities require removal or disturbance of riparian vegetation, replanting with appropriate native plants shall be required at a minimum ratio of 1:1. (emphasis added)*

The Coastal Zoning Code reiterates and implements the policies pertaining to environmental sensitive habitat areas that are contained in the Land Use Plan.

Kibesillah Creek flows along the southern periphery of the subject parcel. The proposed project has been sited approximately 150 feet away from the upland extent of the riparian vegetation along the creek. Since the proposed development will be located more than 100 feet from the riparian habitat, the Commission finds that the proposed development will not have any direct impact on the nearby environmentally sensitive

habitat area or its buffer. However, the risk of sedimentation to the creek is relatively high, given that the construction of the proposed barn will require significant excavation and soil disturbance on an area that slopes moderately steeply and continuously down to Kibesillah Creek. Additionally, construction of the barn will generate significant quantities of excavated overburden materials. Without the implementation of adequate Best Management Practices (BMPs) the project poses a significant threat of sediment discharge to the on-site environmentally sensitive habitat areas. To ensure that the project is consistent with LUP policy 3.1-11 and will not result in excessive or increased sedimentation to the creek, the Commission attaches Special Condition No. 5, which requires the applicant to submit a revised erosion control plan for review and approval of the Executive Director prior to issuance of the permit. Special Condition No. 5 also requires that the applicant conduct the development in accordance with the approved erosion and runoff control plans.

The Commission also attaches Special Condition No. 4, which requires recordation of a deed restriction stating that all future development on the subject parcel, including expansion of the existing test plot vineyard on the property, would require an amendment to the permit. This condition will allow future development to be reviewed to ensure that the project will not be sited where it might have significant adverse impacts on environmentally sensitive habitat areas.

An existing vineyard on the parcel was authorized under the original permit approved by the Commission for the winery as a test plot vineyard. The applicant is not proposing to expand the vineyard as part of the current application but has indicated that she may wish to do so in the future. Expansion of the vineyard could result in its own water quality impacts on Kibesillah Creek if not properly managed. For example, the grading of the soil to convert open field to vineyard could lead to sedimentation impacts and the application of fertilizers and pesticides could lead to such chemicals being washed into the creek with stormwater runoff. Special Condition No. 4 will allow future development to be reviewed to ensure that significant adverse impacts of the proposed development on environmentally sensitive habitat areas are avoided or minimized.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with LUP policies 3.1-2, 3.1-7, 3.1-10, and 3.1-11 as no development is proposed within the environmentally sensitive habitat itself, because an adequate buffer will be maintained that will not be developed, and because Special Condition No. 3 will minimize the potential for development impacts such as increased runoff and sedimentation.

#### **6. Public Access**

Projects located between the first public road and the sea and within the coastal development permit jurisdiction of a local government are subject to the coastal access policies of both the Coastal Act and the LCP. Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum access and recreational opportunities shall be provided consistent with public safety



needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. Section 30211 states that development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation. Section 30212 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

LUP policy 3.6-11 states that:

*Visitor accommodations and services on parcels adjoining the shoreline as identified on the public access maps shall provide public access to the blufftop and/or the shoreline. The access, to be required as a condition of permit approval or other methods as described in policy 3.6-5, shall be available to the public at large as well as to guests. In the event that the use is changed to a use other than visitor accommodations or services, an irrevocable offer to dedicate an easement for public access shall be made available to a public entity for acceptance and management. If the accessway is reopened, it shall remain available to the public free of entrance charge.*

LUP policy 3.6-18 states that:

*Along sections of the highway where development intensity will result in pedestrian use, or where this is the siting of the County designated coastal trail, a 15-foot accessway measured from the right-of-way of Highway 1 shall be offered for dedication as a condition of permit approval if the topography is deemed suitable for pathway development. Coastal trail includes trails identified in Table 3.6-1 and portions of Highway 1 and Usal Road that are necessary to connect these trail segments.*

LUP Policy 3.6-27 states that:

*No development shall be approved on a site which will conflict with easements acquired by the public at large by court decree. Where evidence of historic public use indicates the potential for the existence of prescriptive rights, but such rights have not been judicially determined, the County shall apply research methods described in the Attorney General's "Manual on Implied Dedication and Prescriptive Rights." Where such research indicates the potential existence of prescriptive rights, an access easement shall be required as a condition of permit approval.*

Mendocino County LUP Policy 3.6-11 requires the dedication of easements for public accessways for new visitor serving facilities located along the shoreline. Additionally, LUP Policy 3.6-18 requires that along sections of the highway *where there is the siting of the County designated coastal trail, a 15-foot accessway measured from the right-of-way of Highway 1 shall be offered for dedication as a condition of permit approval.* The project site is located west of Highway One, but it is not designated as a potential public

access trail location on the County's LUP maps. However, LUP table 3.6-1 and the LUP map (Exhibit 5) identify a vertical and lateral accessway about ½ mile to north of the subject parcel through a Caltrans scenic easement. Additionally, LUP Table 3.6-1 and the LUP map identify a proposed lateral accessway on parcels to the south of the subject site. LUP Policy 3.6-18 states that coastal trails include those portions of Highway One necessary to connect identified trail segments. Therefore, the portion of Highway One between these two accessways may be considered to be part of the coastal trail as it provides a necessary connection between these trail segments. If the development is sited along the County designated coastal trail, LUP policy 3.6-18 provides that an offer to dedicate a 15-foot-wide lateral accessway adjacent to the right of way of Highway One shall be required as a condition of permit approval for the development if the topography is deemed suitable for pathway development.

However, in its application of these policies, the Commission is limited by the need to show that any denial of a permit application based on these sections, or any decision to grant a permit subject to special conditions requiring public access, is necessary to offset a project's adverse impact on existing or potential public access. No trail traverses down the steep and rugged bluff face to the ocean below. In addition, the property is fenced and there is no continuous trail along the bluff edge extending from the north end of the property to the south. Foot paths to the bluff edge extend from the winery, but there is no evidence indicating that these trails are used by anyone other than winery employees and guests. No member of the public has come forward to claim that they have used the property for access purposes. Furthermore, the expansion of the winery will not draw large numbers of people to the shoreline so as to significantly increase the demand for public access. Moreover no other impacts of the proposed winery expansion on existing or potential public access have been identified. Therefore, the Commission finds that the proposed project, which does not include provision of public access is consistent with the public access policies of the Coastal Act and the County's LCP.

Staff has discussed with the applicant whether she would propose to provide public access as part of her development. The applicant has stated that she supports the concept of a continuous coastal trail and would be willing to consider a lateral easement or public trail through the eastern portion of her property, but only if adjacent landowners would also agree to allow access through their properties. The applicant has indicated to Commission staff that she is not willing, at this time, to voluntarily provide public access through the site to facilitate the coastal trail as part of the proposed development.

7. California Environmentally Quality Act.

Section 13096 of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by findings showing that the application, as modified by any conditions of approval, is consistent with any applicable requirement of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect the proposed development may have on the environment. As discussed above, the proposed project has been

conditioned to be found consistent with the Mendocino County LCP and the public access and recreation policies of the Coastal Act. Mitigation measures which will minimize all adverse environmental impacts have been required.

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the project as conditioned can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

1. Location Map
2. Vicinity Map
3. Site Plan
4. Elevations
5. LUP map
6. Appeal to Commission, January 12, 2000
7. Appeal reference: Notice of Final Action
8. Appeal reference: County Staff Report
9. Staff Report for original project
10. Botanical Report
11. Geotechnical Report
12. County guidelines for determining building heights
13. Correspondence from County staff
14. Applicants Correspondence

**ATTACHMENT A**

**Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.